U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37313947

Date: MAR. 25, 2025

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner seeks employment-based second preference (EB-2) immigrant classification on behalf of the Beneficiary, a senior software engineer, as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate the Beneficiary's eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's*, Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish a beneficiary's eligibility as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes a beneficiary's eligibility for the underlying EB-2 classification, the petitioner must then demonstrate that the beneficiary merits a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver

petitions. Dhanasar states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Beneficiary obtained a master of science degree in computer science from [redacted] University in 2019. He holds O-1 nonimmigrant status and has been employed by the Petitioner as a senior software engineer since June 2023. The Beneficiary's proposed endeavor is to use cloud computing, advanced computing data storage solutions and data processing and analysis techniques, and cybersecurity methodologies to develop enterprise-level network security architecture and related cloud-based software solutions.

The Director determined the Beneficiary qualified for the underlying EB-2 classification as an advanced degree professional. However, the Director found that while the proposed endeavor had substantial merit, the Petitioner had not demonstrated its national importance under *Dhanasar's* first prong, or the Beneficiary's eligibility under the second and third prongs of *Dhanasar's* framework.

To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality, including relevance, probative value, and credibility, of the evidence. Matter of Chawathe, 25 I&N Dec. at 375-76; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we noted that, in assessing national importance, "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id at 890. We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." Id.

On appeal, the Petitioner provides a brief and resubmits the underlying record.[2] According to the Petitioner, the Director erred by overlooking evidence, specifically the support and expert letters, and

[1] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[2] The record below included: briefs; the Beneficiary's academic documents; the Petitioner's financial data; articles on the Petitioner, the shortage of STEM workers, the Beneficiary's field; an expert opinion letter; letters of support; documents on the government's prioritization of the safe development of artificial intelligence and other technology related national initiatives; the Beneficiary's published articles and citations to the Beneficiary's work; U.S. patent naming the Beneficiary as one of the inventors.

did not apply the preponderance of the evidence standard. However, the Petitioner does not identify examples in support of its assertion. Upon de novo review, we conclude, for the reasons discussed below, the Director properly evaluated the evidence in determining the Petitioner had not established by a preponderance of the evidence that the Beneficiary's proposed endeavor has national importance.

Further, the Director acknowledged the letters submitted and found they did not support the national importance of the Beneficiary's endeavor. We agree. For example, many of the letters are from former or current colleagues who discuss the Beneficiary's past achievements, knowledge, skills, and abilities, which relate to the second prong of the Dhanasar framework and shifts the focus from the proposed endeavor to the foreign national. Id.at 889. In our analysis of prong one, our focus is on the specific endeavor that the individual proposes to undertake. Id. Only two of the letters, one by an industry expert and one by the Beneficiary's current manager, both dated August 2024, address the Petitioner's proposed endeavor. But both letters speak in broad terms, alleging without corroborating details or data that, for example, the Beneficiary's work through technological advances contributes directly to the continued growth of major U.S. technology-driven businesses, and that the Beneficiary is involved in critical initiatives that will advance U.S. economic and national security goals.

The Petitioner also asserts the record below included substantial information of the impact of the Beneficiary's proposed endeavor on critical U.S. economic, national security, and technological interests to demonstrate its national importance by a preponderance of the evidence. The Petitioner contends its standing within the digital media industry allows it to contribute significant revenue annually to the U.S. economy and the Beneficiary's contributions to the Petitioner facilitates its e-commerce sales while protecting its consumer data. The Petitioner then reasons that by contributing to its network security architecture and information technology infrastructure, the Beneficiary will support critical U.S. national economic interests and cybersecurity goals with respect to protecting critical consumer data, which is in line with U.S. national data security, data privacy, and cybersecurity interests. As addressed by the Director, the Petitioner did not demonstrate that the economic implications of its operations would be attributable to the Beneficiary's projects to demonstrate the national importance of the proposed endeavor. We agree.

We acknowledge the Petitioner's financial documents and the articles describing its contributions to the digital media industry. However, the Petitioner cannot rely on its revenue and impact within the field to claim the Beneficiary's work is nationally important. Benefits to a specific employer alone, even an employer with a national footprint, are not sufficiently relevant to the question of whether a person's endeavor has national importance. See generally USCIS Policy Alert PA-2025-03, Second Preference Eligibility for National Interest Waiver Petitions 13 (Jan. 15, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250115-Employment-BasedNationalInterestWaivers.pdf (providing, as guidance, factors to consider in analyzing national importance). At issue is whether the petitioner can demonstrate that the beneficiary's individual endeavor stands to have broader implications, such as for a field, a region, or the public at large. Id. Here, the Petitioner has not shown, for example, how the specific functions and tasks carried out by the Beneficiary in his proposed endeavor would have broader implications amounting to national importance. The record does not contain any financial analysis or details supporting how the Beneficiary's proposed services affect the Petitioner's revenue such that it would have significant potential to employ U.S. workers or "other substantial positive economic effects, particularly in an economically depressed area." See Dhanasar, 26 I&N Dec. at 889-90. We also recognize that the

Beneficiary's work touches upon technological areas that are U.S government priorities and is a Science, Technology, Engineering, or Mathematics (STEM) related profession. However, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. Id. at 889 (in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake").

The Petitioner further contends that the Beneficiary's endeavor will extend beyond itself to impact U.S. national interests and U.S. societal welfare. According to the Petitioner, the Beneficiary will continue to develop robust network architecture and cloud-based software infrastructure, which helps everyday Americans feel comfortable with sharing their personal and financial data with e-commerce companies and the Beneficiary's contributions "could be effectively applied across various companies within the industry and are not just isolated to Shutterstock." However, the Director addressed this argument, and we agree with the determination that the Beneficiary's proposed endeavor focuses on enhancing the Petitioner's technology, digital content library, platforms, and applications, and the Petitioner has not demonstrated how the benefits of the Beneficiary's employment as a senior software engineer stand to extend beyond the Petitioner to impact the field or industry more broadly. For instance, to establish broader public or commercial implications at a level consistent with national importance for this field or industry, a petitioner could demonstrate, through the submission of relevant evidence, widespread interest in adoption or licensing of the technology, a novel and important manufacturing or operational process, or how the technology stands to impact the development of similar technology by other companies. See generally USCIS Policy Alert PA-2025-03, supra at13 (providing, as guidance, examples of how a petitioner may demonstrate a beneficiary's endeavor has national importance). The Petitioner here has not made such a showing. Rather, the Beneficiary's manager described the Beneficiary's work as confidential and said only limited details regarding the Beneficiary's work would be shared. Moreover, we add that the Petitioner has not demonstrated that the technological advancements resulting from the Petitioner's operations would be directly attributable to the Beneficiary's particular role as a senior software engineer. As his manager stated, the Beneficiary is part of a team with other engineers and an engineering manager, which feeds into divisions. Further, the issue here is not the broader implications of the Petitioner's innovations or the potential utilization of its products by the industry, but rather the potential prospective impact of the Beneficiary's specific proposed work as a senior software engineer.

Finally, the Petitioner claims that it demonstrated that the Beneficiary's endeavor helps advance the U.S. interest in attracting and retaining STEM workers, which is critically important given the shortage of qualified workers in these fields. However, the alleged shortage of occupations or occupational skills does not render a proposed endeavor nationally important under the Dhanasar framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner has not established the national importance of the Beneficiary's proposed endeavor. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining arguments raised by the Petitioner concerning the Beneficiary's eligibility under Dhanasar's second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are

unnecessary to the ultimate decision); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not established the Beneficiary meets the requisite first prong of Dhanasar's analytical framework, it consequently has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.